

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH E. SMITH,)	
)	
Plaintiff(s),)	No. C06-2966 BZ
)	
v.)	ORDER SCHEDULING
)	JURY TRIAL AND
CITIFINANCIAL RETAIL)	PRETRIAL MATTERS
SERVICES and CITIBANK (SOUTH)	
DAKOTA), N.A.,)	
)	
Defendant(s).)	
)	
_____)	

Following the telephonic conference at which all parties were represented by counsel, **IT IS HEREBY ORDERED** that the Status Conference scheduled to be held on February 26, 2007 is **VACATED**. It is further **ORDERED** as follows:

1. DATES

Trial Date: **Monday, 9/10/2007, 5 days**

Pretrial Conference: **Tuesday, 8/28/2007, 3:00 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 8/01/2007**

Last Day for Expert Discovery: **Friday, 6/22/2007**

Last Day for Expert Disclosure: **Friday, 6/15/2007**

Close of Non-expert Discovery: **Friday, 6/8/2007**

1 2. DISCLOSURE AND DISCOVERY

2 The parties are reminded that a failure to voluntarily
3 disclose information pursuant to Federal Rule of Civil
4 Procedure 26(a) or to supplement disclosures or discovery
5 responses pursuant to Rule 26(e) may result in exclusionary
6 sanctions. Thirty days prior to the close of non-expert
7 discovery, lead counsel for each party shall serve and file a
8 certification that all supplementation has been completed.

9 In the event a discovery dispute arises, **lead counsel** for
10 each party shall meet in person or, if counsel are outside the
11 Bay Area, by telephone and make a good faith effort to resolve
12 their dispute. Exchanging letters or telephone messages about
13 the dispute is insufficient. The Court does not read
14 subsequent positioning letters; parties shall instead make a
15 contemporaneous record of their meeting using a tape recorder
16 or a court reporter.

17 In the event they cannot resolve their dispute, the
18 parties must participate in a telephone conference with the
19 Court **before** filing any discovery motions or other papers.
20 The party seeking discovery shall request a conference in a
21 letter served on all parties not exceeding two pages (with no
22 attachments) which briefly explains the nature of the action
23 and the issues in dispute. Other parties shall reply in
24 similar fashion within two days of receiving the letter
25 requesting the conference. The Court will contact the parties
26 to schedule the conference.

27 3. MOTIONS

28 Consult Civil Local Rules 7-1 through 7-5 and this

1 Court's standing orders regarding motion practice. Motions
2 for **summary judgment** shall be accompanied by a statement of
3 the material facts not in dispute supported by citations to
4 admissible evidence. The parties shall file a joint statement
5 of undisputed facts where possible. If the parties are unable
6 to reach complete agreement after meeting and conferring, they
7 shall file a joint statement of the undisputed facts about
8 which they do agree. Any party may then file a separate
9 statement of the additional facts that the party contends are
10 undisputed. A party who without substantial justification
11 contends that a fact is in dispute is subject to sanctions.

12 A Chambers copy of all briefs shall be submitted on a
13 diskette formatted in WordPerfect 6.1, 8, 9 or 10 (Windows) or
14 WordPerfect 5.1 (DOS).

15 4. SETTLEMENT

16 This case has been referred for assignment to a
17 Magistrate Judge to conduct a settlement conference in May or
18 June 2007. Counsel will be contacted by that judge's chambers
19 with a date and time for the conference.

20 5. PRETRIAL CONFERENCE

21 Not less than thirty days prior to the date of the
22 pretrial conference, the parties shall meet and take all steps
23 necessary to fulfill the requirements of this Order.

24 Not less than twenty days prior to the pretrial
25 conference, the parties shall: (1) serve and file a joint
26 pretrial statement, containing the information listed in
27 **Attachment 1**, and a proposed pretrial order; (2) serve and
28 file trial briefs, Daubert motions, motions in limine,

1 proposed findings of fact and conclusions of law, and
2 statements designating excerpts from discovery that will be
3 offered at trial (specifying the witness and page and line
4 references); (3) exchange exhibits, agree on and number a
5 joint set of exhibits and number separately those exhibits to
6 which the parties cannot agree; (4) deliver all marked trial
7 exhibits directly to the courtroom clerk, Ms. Scott; (5)
8 deliver one extra set of all marked exhibits directly to
9 Chambers; and (6) submit all exhibits in three-ring binders.
10 Each exhibit shall be marked with an exhibit label as
11 contained in **Attachment 2**. The exhibits shall also be
12 separated with correctly marked side tabs so that they are
13 easy to find.

14 No party shall be permitted to call any witness or offer
15 any exhibit in its case in chief that is not disclosed at
16 pretrial, without leave of Court and for good cause.

17 Lead trial counsel for each party shall meet and confer
18 in an effort to resolve all disputes regarding anticipated
19 testimony, witnesses and exhibits. All Daubert motions,
20 motions in limine, and objections will be heard at the
21 pretrial conference. Not less than ten days prior to the
22 pretrial conference, the parties shall serve and file any
23 objections to witnesses or exhibits or to the qualifications
24 of an expert witness. Daubert motions and motion in limine
25 shall be filed and served not less than twenty days prior to
26 the conference. Oppositions shall be filed and served not
27 less than ten days prior to the conference. There shall be no
28 replies.

1 Not less than twenty days prior to the pretrial
2 conference the parties shall serve and file requested voir
3 dire questions, jury instructions, and forms of verdict. The
4 following jury instructions from the *Manual of Model Civil*
5 *Jury Instructions for the Ninth Circuit* (1997 ed.) will be
6 given absent objection: 1.1-1.12, 2.1-2.2, 3.1-3.3, 3.5-3.8,
7 4.1-4.3. Do not submit a copy of these instructions. Counsel
8 shall submit a joint set of case specific instructions. Any
9 instructions on which the parties cannot agree may be
10 submitted separately. The Ninth Circuit Manual should be used
11 where possible. Each requested instruction shall be typed in
12 full on a separate page with citations to the authority upon
13 which it is based. Proposed jury instructions taken from the
14 Ninth Circuit Manual need only contain a citation to that
15 source. Any modifications made to proposed instructions taken
16 from a manual of model instructions must be clearly indicated.
17 In addition, all proposed jury instructions should conform to
18 the format of the Example Jury Instruction attached to this
19 Order. Not less than ten days prior to the pretrial
20 conference, the parties shall serve and file any objections to
21 separately proposed jury instructions.

22 Jury instructions that the Court has given in prior cases
23 may be downloaded from the Northern District website at
24 **<http://www.cand.uscourts.gov>**. (Instructions are located on
25 the "Judge Information" page for Magistrate Judge Zimmerman.)
26 The Court will generally give the same instructions in cases
27 involving similar claims unless a party establishes, with
28 supporting authorities, that the instruction is no longer

1 correct or that a different instruction should be given. CACI
2 instructions generally will be given instead of BAJI
3 instructions.

4 All proposed jury instructions, Daubert motions, motions
5 in limine, forms of verdict and trial briefs shall be
6 accompanied by a floppy diskette containing a copy of the
7 document formatted in WordPerfect 6.1, 8, 9 or 10 (Windows) or
8 WordPerfect 5.1 (DOS).

9 At the time of filing the original with the Clerk's
10 Office, two copies of all documents (but only one copy of the
11 exhibits) shall be delivered directly to Chambers (Room 15-
12 6688). Chambers' copies of all pretrial documents shall be
13 three-hole punched at the side, suitable for insertion into
14 standard, three-ring binders.

15 Dated: February 20, 2007

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18 Bernard Zimmerman
19 United States Magistrate Judge
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EXAMPLE PROPOSED JURY INSTRUCTION
For Chambers of Magistrate Judge Zimmerman

A proposed jury instruction should contain the following elements in the following order: (1) the name of the party submitting the instruction; (2) the title of the instruction; (3) the text of the instruction; (4) the authority for the instruction; (5) blank boxes for the Court to note whether it gives the instruction, refuses to give it, or gives it as modified. The following proposed instruction contains these elements.

_____'s Proposed Instruction No. _____.
(Party)

[Title]

[Text]

[Authority]

_____ GIVEN _____ REFUSED _____ GIVEN AS MODIFIED

ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have made to resolve disputes over anticipated testimony, exhibits and witnesses.

1 (A) Witnesses to be Called. In lieu
2 of FRCP 26(a)(3)(A), a list of
3 all witnesses likely to be
4 called at trial, other than
5 solely for impeachment or
6 rebuttal, together with a brief
7 statement following each name
8 describing the substance of the
9 testimony to be given.

6 (B) Estimate of Trial Time. An
7 estimate of the number of court
8 days needed for the presentation
9 of each party's case, indicating
10 possible reductions in time
11 through proposed stipulations,
12 agreed statements of facts, or
13 expedited means of presenting
14 testimony and exhibits.

11 (C) Use of Discovery Responses. In
12 lieu of FRCP 26(a)(3)(B), cite
13 possible presentation at trial
14 of evidence, other than solely
15 for impeachment or rebuttal,
16 through use of excerpts from
17 depositions, from interrogatory
18 answers, or from responses to
19 requests for admission. Counsel
20 shall state any objections to
21 use of these materials and that
22 counsel has conferred respecting
23 such objections.

18 (D) Further Discovery or Motions. A
19 statement of all remaining
20 motions, including motions in
21 limine.

21 **(4) Trial Alternatives and Options.**

22 (A) Settlement Discussion. A
23 statement summarizing the status
24 of settlement negotiations and
25 indicating whether further
26 negotiations are likely to be
27 productive.

25 (B) Amendments, Dismissals. A
26 statement of requested or
27 proposed amendments to pleadings
28 or dismissals of parties, claims
or defenses.

28 (C) Bifurcation, Separate Trial of
Issues. A statement of whether

bifurcation or a separate trial
of specific issues is feasible
and desired.

(5) **Miscellaneous.**

Any other subjects relevant to the trial of the action,
or material to its just, speedy and inexpensive determination.

ATTACHMENT 2

USDC
Case No. CV06-02966 BZ
JOINT Exhibit No. _____
Date Entered _____
Signature _____

USDC
Case No. CV06-02966 BZ
JOINT Exhibit No. _____
Date Entered _____
Signature _____

USDC
Case No. CV06-02966 BZ
JOINT Exhibit No. _____
Date Entered _____
Signature _____

USDC
Case No. CV06-02966 BZ
JOINT Exhibit No. _____
Date Entered _____
Signature _____

USDC
Case No. CV06-02966 BZ
PLNTF Exhibit No. _____
Date Entered _____
Signature _____

USDC
Case No. CV06-02966 BZ
PLNTF Exhibit No. _____
Date Entered _____
Signature _____

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Date Entered _____
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PLNTF Exhibit No. _____
Date Entered _____
Signature _____

USDC
Case No. CV06-02966 BZ
DEFT Exhibit No. _____
Date Entered _____
Signature _____

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